BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Your petitioner, J. Frank Hogue, respectfully represents to the Court, that he is unlawfully imprisoned in the California State Prison at San Quentin, California, and that he is being illegally and unlawfully held; that he has exhausted his remedies in the State Courts of California, and that there are Federal and Constitutional questions of law involved in his case, and he respectfully urges the Court to grant his petition for writ of certiorari and review his case in order that justice may be done him.

Your petitioner respectfully calls the attention of this Court to the order denying his application for writ of habeas corpus as made by the learned United States District Judge, Judge St. Sure, for the Northern District of California, which is as follows:

> "Upon consideration of the petition for writ of habeas corpus filed herein, it appears that said petition should be denied, and it is so ordered.
>
> The petitioner is confined at San Quentin under state process. Under such circumstances the law is settled that even where a defendant has exhausted his state remedies, the United States District Courts will ordinarily not interfere by habeas corpus, BUT WILL LEAVE HIM TO TAKE HIS CASE DIRECT TO THE UNITED STATES SUPREME COURT.
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> Mooney *v.* Holohan, 294 U. S. 103;
> Urquhart *v.* Brown, 205 U. S. 179, 181;
> Mooney *v.* Holohan, 7 Fed. Supp. 385, 390;
> Ex parte Jefferson, 106 F. (2) 471.
>
> Dated April 19, 1941.
>
> A. F. St. Sure,
> *United States District Judge.*"

Your petitioner further calls the attention of this Court to the opinion handed down in his case by the United States Circuit Court of Appeals for the Ninth Circuit, upon ap-

peal of his case from the lower Federal Court. Your petitioner feels that in affirming the decree of the lower Federal Court, the United States Circuit Court of Appeals in reality affirmed the petitioner's right to bring his case to this Court.

Your petitioner further shows this Court that in the Brief which was filed in the United States Circuit Court of Appeals for the Ninth Circuit, by the Honorable Earl Warren, and the Honorable David K. Lener, the Attorney General and deputy Attorney General of the State of California, in their concluding remarks and on page 14 of said brief they urged upon that Court as follows:

> "IT IS SUBMITTED THIS COURT (a) WILL NOT EXERCISE ITS DISCRETION AND TAKE JURISDICTION, *BUT WILL LEAVE APPELLANT TO HIS REMEDY IN THE UNITED STATES SUPREME COURT*, he having exhausted it in the State Courts; (b) that in the alternative the appeal is without merit, and that in either of them the order of the United States District Court should be affirmed."

Your petitioner further calls the Court's attention to the fact that the said United States Circuit Court of Appeals in rendering its decision did not deny the petitioner's application for writ of habeas corpus for want of merit, as was suggested to that Court by the Attorney General of California.

WHEREFORE it is respectfully urged that this Court grant his petition for a writ of certiorari, and upon review of his petition for a writ of habeas corpus, that he be granted his freedom as prayed for in his application for writ of habeas corpus.

Respectfully submitted,

(Signed) J. FRANK HOGUE,
Petitioner.